



## APPENDIX A

### STATUTORY ANTECEDENTS TO THE COMPTROLLER GENERAL'S FUNCTIONS UNDER THE 1921 ACT

The first Congress in 1789 enacted a law creating the Treasury Department and establishing its top officers, including the Secretary, the Comptroller of the Treasury, the Auditor, and the Register.<sup>1</sup> That statute detailed a variety of duties of the Comptroller:

"[I]t shall be the duty of the Comptroller to superintend the adjustment and preservation of the public accounts; to examine all accounts settled by the Auditor, and certify the balances arising thereon to the Register; to countersign all warrants drawn by the Secretary of the Treasury, which shall be warranted by law; to report to the Secretary the official forms of all papers to be issued in the different offices for collecting the public revenue, and the manner and form of keeping and stating the accounts of the several persons employed therein. He shall moreover provide for the regular and punctual payment of all monies which may be collected, and shall *direct prosecutions for all delinquencies of officers of the revenue; and for debts that are, or shall be due to the United States.*"<sup>2</sup>

The responsibility of the Comptroller of the Treasury to "direct prosecutions for all delinquencies of officers of the revenue; and for debts that are, or shall be due to the United States" was enhanced by the Act of March 3, 1795, which authorized him to commence suits for recovery of debts from accountable officers.<sup>3</sup> The Act of

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<sup>1</sup> Act of Sept. 2, 1789, ch. 12, 1 Stat. 65.

<sup>2</sup> *Id.* § 3, 1 Stat. at 66 (emphasis added).

<sup>3</sup> Ch. 48, 1 Stat. 441.

March 3, 1797 went beyond this: It not only authorized but required the Comptroller to bring suit on such debts.<sup>4</sup>

The Treasury Department was reorganized by the Act of March 3, 1817.<sup>5</sup> That law added a second Comptroller of the Treasury and four more Auditors, centralizing in the Treasury Department certain account settlement and warrant countersignature functions that had been performed by the accountants in the War and Navy Departments. Section 2 of the 1817 Act provided that

"all claims and demands whatever, by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Treasury Department."<sup>6</sup>

The Comptroller General's present authority to settle accounts and claims is a direct descendant of that provision.<sup>7</sup> The tasks of the First Comptroller of the Treasury included the duty

"to examine all accounts settled by the first and fifth auditors, and certify the balances arising thereon to the register; to countersign all warrants drawn by the Secretary of the Treasury, which shall be warranted by law; to report to the secretary the official forms to be issued in the different offices for collecting the public revenue, and the manner and form of keeping and stating the accounts of the

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<sup>4</sup> Ch. 20, 1 Stat. 512.

<sup>5</sup> Ch. 45, 3 Stat. 366.

<sup>6</sup> *Id. Compare* 31 U.S.C. §§ 3526(a), 3702(a) (1982).

<sup>7</sup> See 31 U.S.C. § 3526(a) (1982) ("The Comptroller General shall settle all accounts of the United States Government and supervise the recovery of all debts finally certified by the Comptroller General as due the Government."); *id.* § 3526(d) ("On settling an account of the Government, the balance certified by the Comptroller General *is conclusive on the executive branch of the Government.*"') (emphasis added).

several persons employed therein; [and to] superintend the preservation of the public accounts, subject to his revision, and provide for the regular payment of all moneys which may be collected.”<sup>8</sup>

The 1817 Act also carried forward the First Comptroller’s enforcement duties with respect to collection of debts:

“[I]t shall be the duty of the first comptroller to superintend the recovery of all debts to the United States; to direct suits and legal proceedings, and take all such measures as may be authorized by the laws, to enforce prompt payment of all debts to the United States.”<sup>9</sup>

The pattern of fiscal administration established by the 1817 Act persisted through most of the nineteenth century.<sup>10</sup> The pattern was again altered by the Dockery Act of 1894.<sup>11</sup> That law abolished the Second Comptroller, reinvesting his duties in the First Comptroller, in a reversion to the scheme of the 1789 Act. The Auditors continued to examine and certify balances, to settle accounts, and to superintend, under the direction of the Comptroller, the recovery of debts due the United

<sup>8</sup> Act of March 3, 1817, § 8, 3 Stat. at 367. Section 9 set out the duties of the Second Comptroller; these included examination of accounts settled by the second, third, and fourth Auditors, and countersignature of Treasury warrants signed by the Secretaries of War and the Navy.

<sup>9</sup> *Id.* § 10, 3 Stat. at 368. This debt collection responsibility has been superseded recently by a more comprehensive debt collection law, under which the Comptroller General and the Attorney General jointly prescribe claims collection standards. 31 U.S.C.A. §§ 3711-3719 (West Supp. 1985).

<sup>10</sup> The Act of March 30, 1868, amended the 1817 Act to state that the balances certified by the Comptroller of the Treasury were “final and conclusive” on the heads of the departments. Ch. 36, 15 Stat. 54. This provision, as rephrased, remains in effect with respect to the Comptroller General. See 31 U.S.C. § 3526(d) (1982).

<sup>11</sup> Ch. 174, §§ 3-4, 28 Stat. 162, 205-06.

States. Balances certified by the Auditors, or by the Comptroller on appeal from their decisions, were made "final and conclusive" on the "Executive Branch."<sup>12</sup> The Dockery Act authorized the Comptroller to render advance decisions on questions of payment when requested by disbursing officers and department heads, also an antecedent of an existing GAO responsibility.<sup>13</sup> It required the Comptroller to countersign all Treasury warrants, an authority now vested in the Comptroller General.<sup>14</sup> And it required the Comptroller to "prescribe the forms of keeping and rendering all public accounts" (except those of the Post Office), a function now performed by the Comptroller General.<sup>15</sup>

The Budget and Accounting Act of 1921 transferred these authorities to the new Comptroller General.<sup>16</sup>

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<sup>12</sup> *Id.* § 8, 28 Stat. at 207.

<sup>13</sup> *Id.* § 8, 28 Stat. at 208. *Compare* 31 U.S.C. § 3526 (1982).

<sup>14</sup> Dockery Act § 11, 28 Stat. at 209. *Compare* 31 U.S.C. § 3323 (1982).

<sup>15</sup> Dockery Act § 5, 28 Stat. at 206. *Compare* 31 U.S.C. § 3511 (1982).

<sup>16</sup> Ch. 18, § 304, 42 Stat. 20, 24 (1921).

## APPENDIX B

### RELEVANT LEGISLATIVE HISTORY MATERIALS FOR THE 1921 ACT

#### I. H.R. 9783—66th Congress

1. H.R. 9783 was introduced in the House of Representatives by Representative Good in 1919. 58 Cong. Rec. 6533 (1919).

2. As introduced, section 9 of H.R. 9783 provided in pertinent part:

“That there is created a department to be known as the accounting department, which shall be an establishment of the Government independent of the executive departments and under the control and direction of the comptroller general of the United States. . . .

“There shall be in the accounting department a comptroller general of the United States and an assistant comptroller general of the United States, who shall be appointed by the President, with the advice and consent of the Senate. . . . The comptroller general and the assistant comptroller general shall hold office during good behavior, but may be removed at any time by concurrent resolution of Congress after notice and hearing, when, in their judgment, the comptroller general or assistant comptroller general has been inefficient, or guilty of neglect of duty, or of malfeasance in office, and for no other cause and in no other manner.”

58 Cong. Rec. 7231 (1919).

3. H.R. 9783 was amended on the floor to add to the enumerated causes for removal “any felony or conduct involving moral turpitude.” 58 Cong. Rec. 7282-83 (1919). It was also amended to add impeachment as an alternative means of removal. *Id.* at 7281.

(1b)

4. As amended, H.R. 9783 passed the House. 58 Cong. Rec. 7297 (1919).

5. The Senate amended H.R. 9783, striking out everything following the enacting clause and substituting its own text. 59 Cong. Rec. 6278-80 (1920). Section 21 of the Senate's substitute text read, in pertinent part:

"That there is created an establishment to be known as the general accounting office, which shall be independent of the several executive departments and under the control and direction of the comptroller general of the United States. . . .

"There shall be in the general accounting office a comptroller general of the United States and three assistant comptrollers general of the United States, who shall be nominated and, by and with the advice and consent of the Senate, appointed by the President. . . . The comptroller general and the assistant comptroller general shall hold office for a term of five years and shall be removable only for cause."

*Id.* at 6279. This version of H.R. 9783 passed the Senate. *Id.* at 6395.

6. The House and Senate conferees agreed that the new agency would be called the "general accounting office," and that there would be a single Comptroller General and a single Assistant Comptroller General. Conference Report on H.R. 9783, H. Rep. 1044, *reprinted in* 59 Cong. Rec. 7942, 7944 (1920). Section 303 of H.R. 9783, as agreed to by the conferees, provided in pertinent part:

"The comptroller general and the assistant comptroller general shall hold office during good behavior, but may be removed at any time by concurrent resolution of Congress, after notice and hearing, when, in their judgment, the comptroller general or assistant comptroller general is incapacitated or inefficient,

or has been guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment."

*Id.*

7. H.R. 9783, as agreed to by the conferees, passed the Senate on May 27, 1920. 59 Cong. Rec. 7722 (1920). It passed the House on May 29, 1920. *Id.* at 7956.

8. President Wilson vetoed H.R. 9783 on June 4, 1920.

The text of his veto message is set out below:

"I am returning without my signature H.R. 9783, 'An act to provide a national budget system, an independent audit of Government accounts, and for other purposes.' I do this with the greatest regret. I am in entire sympathy with the objects of this bill and would gladly approve it but for the fact that I regard one of the provisions contained in section 303 as unconstitutional. This is the provision to the effect that the comptroller general and the assistant comptroller general, who are to be appointed by the President with the advice and consent of the Senate, may be removed at any time by a concurrent resolution of Congress after notice and hearing, when, in their judgment, the comptroller general or assistant comptroller general is incapacitated or inefficient, or has been guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment. The effect of this is to prevent the removal of these officers for any cause except either by impeachment or a concurrent resolution of Congress. It has, I think, always been the accepted construction of the Constitution that the power to appoint officers of this kind carries with it, as an incident, the power to remove. I am convinced that the Congress is without constitutional

power to limit the appointing power and its incident, the power of removal derived from the Constitution.

"The section referred to not only forbids the Executive to remove these officers but undertakes to empower the Congress by a concurrent resolution to remove an officer appointed by the President with the advice and consent of the Senate. I can find in the Constitution no warrant for the exercise of this power by the Congress. There is certainly no express authority conferred, and I am unable to see that authority for the exercise of this power is implied in any express grant of power. On the contrary, I think its exercise is clearly negatived by section 2 of Article II. That section, after providing that certain enumerated officers and all officers whose appointments are not otherwise provided for shall be appointed by the President with the advice and consent of the Senate, provides that the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of department. It would have been within the constitutional power of the Congress, in creating these offices, to have vested the power of appointment in the President alone, in the President with the advice and consent of the Senate, or even in the head of a department. Regarding as I do the power of removal from office as an essential incident to the appointing power, I can not escape the conclusion that the vesting of this power of removal in the Congress is unconstitutional and therefore I am unable to approve the bill.

"I am returning the bill at the earliest possible moment with the hope that the Congress may find time before adjournment to remedy this defect."

59 Cong. Rec. 8609-10 (1920).

9. On the same day, a vote to override President Wilson's veto failed in the House. 59 Cong. Rec. 8613-14 (1920).

## II. H.R. 14,441—66th Congress

On June 5, 1920, the final day of the second session of the 66th Congress, Representative Good introduced H.R. 14,441. 59 Cong. Rec. 8647 (1920). This bill attempted to meet President Wilson's objections by altering the removal provision. The new appointment and removal provisions as initially proposed by Representative Good provided:

"Sec. 302. There shall be in the general accounting office a comptroller general of the United States and an assistant comptroller general of the United States, who shall be appointed by the Supreme Court of the United States . . . ."

"Sec. 303. The comptroller general and the assistant comptroller general shall hold office during good behavior, but may be removed at any time by the Supreme Court of the United States after notice and hearing, when, in the judgment of the Supreme Court of the United States, the comptroller general or assistant comptroller general is incapacitated or inefficient, or has been guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and in no other manner except by impeachment."

*Id.* at 8648.

2. The proposed vesting of appointment and removal power in the Supreme Court proved controversial. 59 Cong. Rec. 8649-52 (1920). In response to this opposition, Representative Good proposed that section 302 provide for appointment by the President, with the advice and consent of the Senate. *Id.* at 8656. Similarly, he proposed to amend section 303 to provide: "The comptroller general and the assistant comptroller general shall hold office during good behavior." *Id.*

3. As so amended, H.R. 14,441 passed the House on June 5, 1920. 59 Cong. Rec. 8657 (1920). Senator Smoot

introduced H.R. 14,441 in the Senate, *id.* at 8625, but no vote was taken before the second session ended the same day. In the short third session, H.R. 14,441 was again raised in the Senate, but was passed over at the instance of Senator Smoot, who stated that a number of absent Senators wished to be present when the bill was considered. 60 Cong. Rec. 2001 (1921).

### III. S. 1084—67th Congress

1. Senator McCormick introduced S. 1084. 61 Cong. Rec. 595 (1921).

2. Section 303 of S. 1084 provided for removal in the following terms:

“That the comptroller general and the assistant comptroller general shall hold office for seven years, but may be removed at any time by joint resolution of Congress after notice and hearing, when, in the judgment of Congress, the comptroller general or assistant comptroller general has been inefficient, or guilty of neglect of duty, or of malfeasance in office, or of any felony or conduct involving moral turpitude, and for no other cause and in no other manner except by impeachment.”

61 Cong. Rec. 658 (1921).

3. S. 1084 passed the Senate. 61 Cong. Rec. 662 (1921).

4. At the same time that S. 1084 was proceeding in the Senate, the House was considering H.R. 30, which was introduced by Representative Good. 61 Cong. Rec. 87 (1921).

a. The House amended S. 1084 by striking everything following the enacting clause, and substituting the text of H.R. 30. 61 Cong. Rec. 974, 993-94, 1091-93 (1921).

b. Section 303 of H.R. 30 was the same as its counterpart in H.R. 9783 in the previous Congress. As H.R. 30

was initially introduced, it omitted one cause of removal present in H.R. 9783 (incapacitation). 61 Cong. Rec. 1079 (1921). That cause was reinstated by amendment. *Id.* at 1083.

5. S. 1084 (as amended by substitution of the text of H.R. 30) passed the House. 61 Cong. Rec. 1091-93 (1921).

6. The House and Senate conferees agreed to a revised section 303 identical to that which became law as section 303 of the Budget and Accounting Act of 1921. *See* S. Doc. No. 15, 67th Cong., 1st Sess. (1921), reprinted in 61 Cong. Rec. 1783, 1784-85 (1921).

7. S. 1084 passed the Senate on May 26, 1921. 61 Cong. Rec. 1783 (1921). It passed the House the next day. 61 Cong. Rec. 1859 (1921).

8. President Harding signed S. 1084 on June 10, 1921. *See* 61 Cong. Rec. 2500 (1921).